Supreme Court U. S.
FILED
MAY 12 1975
MICHAEL RODAK, JR., CLERK

No. 74-1270

In the
Supreme Court of the United States

OCTOBER TERM, 1974

RUSSELL TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
PETITIONERS,

v.

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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STATUTES INVOLVED

33 U.S.C. §1251(a).

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited; . . . .

33 U.S.C. §1311(f).

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

33 U.S.C. §1314(b).

Such regulations shall–

. . . .

(1)(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources . . . . Factors relating to the assessment of best practicable control technology currently available . . . . shall include consideration of . . . . non-water quality environmental impact (including energy requirements), ...

(2)(B) Factors relating to the assessment of best available technology shall take into account . . . . non-water quality environmental impact (including energy requirements), ...

33 U.S.C. §1342(d).

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b) (5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter.

33 U.S.C. §1362. Definitions

* * * *

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

* * * *

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

* * * *

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

33 U.S.C. §1371(2).

Nothing in the National Environmental Policy Act of 1969 shall be deemed to–

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may

result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

QUESTION PRESENTED

Whether an isolated piece of the legislative history of the Federal Water Pollution Control Act (FWPCA), taken out of context, provides any basis for granting the nuclear industry an exemption from the comprehensive regulatory scheme established under the FWPCA.

STATEMENT

The court of appeals unanimously held that the discharge of all radioactive effluents, including those from sources covered by licenses issued pursuant to the Atomic Energy Act, 42 U.S.C. §2011, *et. seq.* (AEA), are subject to regulation pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.* (Supp. III, 1973). The court's decision was based upon the provision of the FWPCA that specifically includes "radioactive materials," without exception, as a "pollutant" under the FWPCA. 33 U.S.C. §1362(6) (Supp. III, 1973).

The court concluded (Pet. App. 12a) that the plain and obvious meaning of "radioactive materials," when read in the context of other provisions of the FWPCA and the comprehensive, unified system of water pollution control created by the Act (Pet. App. 11a-12a), mandated the inclusion of all "radioactive materials" within the ambit of the FWPCA. The court also held that the "legislative history" relied upon by petitioners is "conflicting and inconclusive" (Pet. App. 12a), and could not be used to change the clear and unambiguous meaning of the statute (Pet. App. 10a).

The decision below invalidated an agreement between the Atomic Energy Commission (AEC) and the Environmental Protection Agency (EPA), 38 Fed. Reg. 24936 (September

11, 1973), whereby EPA relinquished its non-discretionary duty under the FWPCA to regulate all radioactive effluents.

ARGUMENT

The court of appeals correctly held that it was the intent of Congress that all "radioactive materials" discharged into the Nation's waters be regulated pursuant to the comprehensive regulatory scheme established under the FWPCA. Petitioners' challenge to the holding of the court below does not present any issue warranting review by this Court.

1. Petitioners cite (Pet. 17-18) two isolated bits of the legislative history of the FWPCA, which are taken out of context, as the basis upon which this Court should review the decision below. The legislative history relied upon by petitioners is not only misleading, but also is contrary to the weight of the legislative history of the FWPCA which fully supports the holding of the court of appeals. Before discussing the legislative history relied upon by petitioners, however, respondents will show that the other bases of the petition are equally insufficient to grant the petition.

2. Petitioners' primary argument is that the regulation of all "radioactive materials" under the FWPCA will adversely affect the development of the nuclear power industry at the time of an "energy crisis." (pet. 10-16). Whatever merit such policy arguments may have, they are more properly made before the Congress and not before the Court.

This Court has repeatedly held that only Congress can revise the terms of a statute. As was recently stated in *Chemehuevi Tribe of Indians v. Federal Power Commission*. "[w]hatever the merits of the complainants' argument as a matter of policy, it is properly addressed to Congress, not to the courts." 95 S.Ct. 1066, 1082 (1975). *See also Wilderness Society v. Morton*, 479 F.2d 842, 891 (D.C. Cir. 1972), *cert. denied*, 411 U.S. 917 (1973) and *Scenic Hudson Preservation Conference v. Callaway*, 370 F. Supp. 162, 170 (S.D.N.Y. 1973), *aff'd. per curiam*, 499 F.2d 127 (2d Cir. 1974).

This Court should defer to Congress, particularly when to do otherwise would call for a strained interpretation, if not actual rewriting of the statute. Congress recently has adopted

a wide range of laws to lessen the impact of the "energy crisis." This has included efforts to accommodate environmental protection legislation with the national needs for adequate energy supplies.[1]

What petitioners are seeking is an exemption for the nuclear power industry from the comprehensive regulatory scheme of the FWPCA. The creation of such an exemption is for the Congress to decide, not the Court. For this Court to refuse to review the decision below in no way affects Congress' ability to amend the FWPCA or deprives petitioners and other interested parties of the right to seek redress in Congress.[2]

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[1] *See, e.g.*, Special Energy Research and Development Appropriations Act, 1975, P.L. 93-322, 88 Stat. 276; Energy Supply and Environmental Coordination Act of 1974, P.L. 93-319, 88 Stat. 246; Solar Energy Research, Development and Demonstration Act of 1974, P.L. 93-473, 88 Stat. 1431; Energy Reorganization Act of 1974, P.L. 93-438, 88 Stat. 1233; Federal Energy Administration Act of 1974, P.L. 93-275, 88 Stat. 96; Federal Nonnuclear Energy Research and Development Act of 1974, P.L. 93-577, 88 Stat. 1878; Emergency Petroleum Allocation Act of 1973, P.L. 93-159, 88 Stat. 627; and Emergency Daylight Saving Time Energy Conservation Act of 1973, P.L. 93-182, 87 Stat. 707. *Cf.*, proposed amendments to the Clean Air Act in President Ford's Energy Independence Act of 1975, S-594, introduced on February 5, 1975.

[2] It should be noted that the FWPCA specifically states that energy requirements are to be considered in establishing effluent limitations pursuant to 33 U.S.C. §1314(b)(1)(B) and (2)(B) (Supp. III, 1973). When promulgating standards and regulations concerning radioactive materials, the Environmental Protection Agency (EPA) is required to consider the effect of such standards or regulations on the energy demands of the country. It must be assumed that EPA will use its expertise and that of other federal agencies to establish a regulatory scheme that properly balances energy demands with environmental protection.

3. The FWPCA does not create a redundant, overlapping regulatory scheme. Rather, the Act establishes a comprehensive system to regulate *all* water pollution. The decision below ratified this Congressional purpose.

A. The FWPCA is a systematic and comprehensive statutory scheme designed to restore and maintain our Nation's water resources. 33 U.S.C. §1251(a) (Supp. III, 1973). *See Train v. City of New York*, 95 S.Ct. 839, 841 (1975) and *United States v. Ashland Oil and Transportation Co.*, 504 F.2d 1317, 1324-1325 (6th Cir., 1974). To accomplish these goals, Congress mandated that EPA implement the National Pollutant Discharge Elimination System, under which the Administrator of EPA may issue permits "for the discharge of any pollutant, or combination of pollutants. . . ." 33 U.S.C. §1342 (a)(1) (Supp. III, 1973). The FWPCA makes "the discharge of any pollutant by any person . . . unlawful," 33 U.S.C. §1311(a) (Supp. III, 1973), except in compliance with the statute.

When Congress defined the term "discharge of a pollutant," it indicated the broad scope intended for the Act, at 33 U.S.C. §1362(12) (Supp. III, 1973):

> The term 'discharge of a pollutant' and the term 'discharge of pollutants' each means (A) *any* addition of *any* pollutant to navigable waters from *any* point source, (B) *any* addition of *any* pollutant to the waters of the contiguous zone or the ocean from *any* point source other than a vessel or other floating craft. [Emphasis added.]

The FWPCA establishes a national goal of eliminating by 1985 the discharge of all pollutants. 33 U.S.C. §1251(a)(1) (Supp. III, 1973). The Act defines the term "pollutant" to include, without limitation, "radioactive materials," 33 U.S.C. §1362(6) (Supp. III, 1973). "Pollution" is defined as "the *man-made* or *man-induced* alteration of the chemical, physical, biological, and *radiological* integrity of water." 33 U.S.C. §1362(19) (Supp. III, 1973). [Emphasis added.] Furthermore, the FWPCA provides: "Notwithstanding

any other provision of this chapter it shall be unlawful to discharge *any radiological,* chemical, or biological warfare agent or *high-level radioactive* waste into the navigable waters." 33 U.S.C. §1311(f) (Supp. III, 1973). [Emphasis added.]

The statutory definition of "pollutant" contains only two exceptions. "Pollutant" does not include "sewage from vessels" or "water, gas, or other material which is injected into a well to facilitate production of oil or gas." 33 U.S.C. §1362(6) (A) and (B) (Supp. III, 1973). Neither exception relates in any way to "radioactive materials" or excludes "source material," "byproduct material" or "special nuclear material" as defined by the Atomic Energy Act. (Pet. 7-8, nn. 3-5). As the court below stated, "where a statute contains express exceptions, the courts should be exceedingly slow in implying unexpressed exceptions, lest the courts thereby thwart the legislative intent." (Pet. App. 12a).

B. The intent of Congress to give EPA overall authority to regulate all water pollution can be found in the summary of relevant provisions of the FWPCA, introduced by Senator Muskie, the Act's primary author and sponsor, during Senate consideration of the Conference Committee Report, 1 Leg. Hist. 161, 183.[3] Senator Muskie's discussion of 33 U.S.C. §1371(c)(2) (Supp. III, 1973) indicates his particular concern that the Atomic Energy Commission might attempt to bypass the regulatory scheme of the FWPCA. Senator Muskie's summary states that:

> Section [1371(c)(2)] addresses itself to the authority of Federal licensing and permitting agencies, other than EPA, as relates to effluent limitations and other requirements established

[3] Leg. Hist. refers to Committee Print, A Legislative History of the Water Pollution Control Act Amendments of 1972 Together with a Section-by-Section Index, prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress, 93d Cong., 1st Sess. (2 Vols.)

> pursuant to the FWPCA. *EPA is the sole Federal agency specifically charged with comprehensive responsibility to regulate the discharge of pollutants into the waters of the United States, and Section [1371(c)(2)] will ensure that no source of discharge which is in lawful compliance with an effluent limitation established pursuant to the FWPCA will be required to meet a different standard as a condition of a license or permit granted by another Federal agency, such as the Atomic Energy Commission.* [Emphasis added.]

Similarly, in a colloquy between Senators Muskie and Buckley on the floor of the Senate during consideration of the Conference Report, Senator Muskie specifically addressed the question of the supremacy of EPA authority over the AEC with respect to water pollution, at 1 Leg. Hist. 161, 198:

> MR. MUSKIE: Mr. President, I am not sure I heard clearly all of the Senator's question, but if I may try to state it, the Senator is asking whether EPA, in its authority to set effluent limitations controls with respect to the subject matter which the Senator has raised, can set those limitations and whether the AEC has to accept them. The answer is yes.
>
> MR. BUCKLEY: The AEC is precluded from setting higher standards than those imposed by EPA.
>
> MR. MUSKIE: Does the Senator mean more rigorous from an environmental standpoint? I must say that such an action by AEC is not a possibility that occurred to the conferees. It has not occurred to me in my experience over the years. *We considered that this kind of authority should be in EPA and not in AEC,* and in order to put the authority there, we put it in this act, and that is where it is.
>
> MR. BUCKLEY: It is not the intention of the conference committee to exclude the right of other

regulatory bodies to impose more stringent environmental conditions on discharges?

MR. MUSKIE: Again I must say yes, we gave the authority to EPA. *The whole concept of EPA is that environmental considerations are to be determined in one place by an agency whose sole mission is protection of the environment.* It did not occur to us that AEC might be more conscientious in this respect than EPA, so we have given EPA the total authority on the assumption that the risk from AEC was not of the nature described by the Senator but, rather, the opposite, as history demonstrates. [Emphasis added.]

C. In an analogous case, the question of the relationship between a licensing agency (The Federal Power Commission) and the regulatory scheme established under the FWPCA was resolved by the Second Circuit in favor of the comprehensive regulatory system of the FWPCA. *Scenic Hudson Preservation Conference v. Callaway, supra.* The district court opinion, affirmed at 499 F.2d 128, stressed the comprehensive nature of the FWPCA, 370 F. Supp. at 170:

> • • • Con Ed would infer an exception from the [FWPCA] for hydroelectric plants on the theory that Congress could not have intended to interfere with the jursidiction of the FPC in view of the long settled policy, discussed above, of allowing that agency unique control over the production of hydroelectric power. The argument is persuasive at first blush, but even more plausible is plaintiffs' contention that Congress would not design an Act which on its face is all-inclusive, but for specifically enumerated exceptions, and yet intend to establish an unmentioned exception of the scale suggested here. Without any indication that Con Ed's reading of the Congressional will is accurate, the carving out of so major an exception would be improper. If this was Congress' intention and the omission is mere

> oversight, the remedy rests in Congress' hands, and Congress has shown, by its recent amendments to the Alaska pipeline legislation, that it will not hesitate to remove an obstacle to energy production when it believes a change of requirements is necessary in the public interest.

D. The EPA Administrator is required to establish "national standards of performance" for various point sources. 33 U.S.C. §1316 (Supp. III, 1973). The statute enumerates a minimum list of categories of point sources, including, *inter alia,* "steam electric powerplants," 33 U.S.C. §1316(b)(1) (A) (Supp. III, 1973). Some electric powerplants manufacture the steam needed to generate electric power by burning fossil fuels; others manufacture the steam by using the heat generated by nuclear fission in a reactor. Both are "steam electric powerplants," and nothing in §1316 affords any basis whatsoever for claiming that "standards of performance" are to be established for fossil-fuel powerplants but not for nuclear powerplants.[4] The Report of the Senate Committee on Public Works on S.2770, S. Rep. No. 92-414, 92d Cong., 1st Sess., 2 Leg. Hist. 1415, indicates that additional kinds of nuclear facilities are to be added to the list of categories of sources under §1316 by the Administrator as EPA's technical capability increases. Specifically, the Senate Report deals with facilities (which are licensed by AEC) which process irradiated nuclear fuel after its use in reactors, separating wastes for disposal and reclaiming valuable nuclear material for re-use, 2 Leg. Hist. 1477:

> The Committee agreed not to include in its list of new sources nuclear fuels processing plants. The Environmental Protection Agency indicated that the Agency does not have the technical capability to establish controls for such plants at this time. . . . .

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[4] The decision in *Scenic Hudson Preservation Conference v. Callaway, supra,* and 33 U.S.C. §1316 (Supp. III, 1973) show that Congress intended that water pollution from *all* energy production facilities be regulated pursuant to the FWPCA.

If they do not, such a capability should be developed and this particular source should be added to the list of new sources as soon as possible.

E. The regulatory system established under the FWPCA does not result in needless duplication of regulatory effort; rather, it makes possible collaboration and cooperative application of expertise to abate water pollution. The provision of the FWPCA directed at preventing duplication, 33 U.S.C. §1251(f) (Supp. III, 1973), does not require EPA to restrict its jurisdiction when it coincides with that of other federal agencies. Rather, it is a directive that when agency jurisdictions do overlap the procedures worked out by the agencies should aim at efficiency.

Congress mandated that EPA would be "the sole Federal agency charged with the comprehensive responsibility to regulate the discharge of pollutants into the waters." 1 Leg. Hist. 161, 183. It is clear from the language of the Act that other federal agencies cannot use existing licensure authority, either alone or in conjunction with the National Environmental Policy Act 42 U.S.C. §4321 *et seq.*, to establish effluent limitations which would differ from those established pursuant to the FWPCA. 33 U.S.C. §1371(c)(2) (A) and (B) (Supp. III, 1973). *See also* 1 Leg. Hist. 161, 198.

The legislative history of the FWPCA states that the AEC must defer to the EPA with respect to setting effluent limitations for all pollutants and could not utilize its licensure authority or NEPA to circumscribe the FWPCA. 1 Leg. Hist. 183, 198. See discussion *supra*, pp 8-9. It is in this context that 33 U.S.C. §1371(a) (Supp. III, 1973) relied upon by petitioners (Pet. 17), must be read. The authority of other federal agencies to regulate water pollutants remains intact *only* if it does not conflict with the provisions of the FWPCA. The comprehensive regulatory scheme of the FWPCA takes precedence over the pre-existing authority of any other federal agency such as the Nuclear Regulatory Commission (NRC). *See Scenic Hudson Preservation Conference v. Callaway*, *supra*.

F. Contrary to Petitioners' contention (Pet. 6, 7, 12) that the AEC (NRC) exercises exclusive regulatory control over the nuclear industry, there are several other statutes which, without amending the Atomic Energy Act, vest concurrent jurisdiction over radioactive materials in other federal agencies. For example, while the NRC as successor to the AEC imposes health and safety standards for the packaging and transportation of radioactive materials as part of its power to license nuclear facilities, the transportation and packaging of these very same materials is also regulated with regard to the very same radiation hazards by other federal agencies under the Transportation of Explosives Act, 18 U.S.C. §831-835 (rail and highway); the Dangerous Cargo Act, 46 U.S.C. §170 (water); and the Federal Aviation Act, 49 U.S.C. §§1421, 1430, and 1472(h).

G. For this court to rule that EPA does not have jurisdiction to regulate all radioactive water pollutants, merely because they are also subject to the licensing authority of the NRC, would cast serious doubts on the authority of EPA to regulate any water pollutants which emanate from sources also subject to regulation by other federal agencies. Except for sources specifically exempted in the FWPCA, the EPA regulates water pollution from numerous industries, most of which are subject to the jurisdiction of other federal agencies. There is no reason to treat the nuclear industry differently from any other industrial category by implying an exemption from the FWPCA.

4. Petitioners imply (Pet. 12, 14 n. 15) that the holding below somehow conflicts with the decision in *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1972), *aff'd* 405 U.S. 1035. No such conflict exists.

A. The *Northern States Power Co.* decision was rendered prior to enactment of the FWPCA. At that time, the Atomic Energy Commission exercised exclusive Federal jurisdiction over nuclear wastes. The issue decided by the 8th Circuit was *federal* pre-emption of concurrent *state* regulations. 447 F.2d at 1147. Nothing in the decision below affects this ruling. The EPA is a branch of the federal government, as is the NRC, as successor to the AEC. The *Northern States Power Co.* decision in no way adjudicated the

question of the proper relationship between the EPA and the NRC under the FWPCA.

B. Moreover, even if states do assume authority to regulate radioactive wastes pursuant to the provisions of the FWPCA, such an exercise of authority would not conflict with the *Northern States Power Co.* decision. In the latter case, the states were prohibited from regulating radioactive wastes under their own inherent police powers. Hereafter, however, any state involvement in regulating radioactive wastes will be by virtue of specific congressional authorization through the FWPCA and will be within limitations established by the EPA. 33 U.S.C. § 1342(d)(2) (Supp. III, 1973).

5. There is no provision in the FWPCA indicating Congressional intent to exclude any radioactive materials from the Act. Nevertheless, petitioners rely upon the House Report accompanying the House Bill (Pet. 17-18) as a basis for the exemption which they claim exists for the nuclear industry from the comprehensive regulatory scheme of the FWPCA.

The final version of the FWPCA was a substitute for both the Senate and House bills. Conference Report, S. Rep. No. 92-1236, 92d Cong., 2nd Sess. 99 (1972), 1 Leg. Hist. 281, 282. The Conference Report specifically states that the definition of the term "pollutant" was a conference substitute for both the Senate and House bills. 1 Leg. Hist. 326-327. Needless to say, the Conference Report contains no exception for any radioactive materials from the ambit of the FWPCA. 1 Leg. Hist. 326-327. The House Report should not be used to amend the provision substituted by the Conferees.

The section of the House Report relied upon by petitioners contains a second paragraph[5] immediately following the one cited by petitioners which discusses a second

[5] "It is the intent of the Committee that the exclusion from the term "pollutant" relating to the injection of water, gas, or other materials into wells applies only to the properly executed injection of materials into wells to stimulate the primary, secondary, or subsequent production of crude oil or natural gas, and to the properly executed disposal in wells of brines derived in association with the production of crude oil

proposed exclusion from the definition of "pollutant" under the FWPCA. The proposed exclusion, the injection of water, gas or other materials into wells, was made a specific exception in the FWPCA as finally adopted. 33 U.S.C. § 1362(6) (B) (Supp. III, 1973). In contrast to the treatment accorded this exclusion proposed by the House Committee, the FWPCA is totally silent as to any special treatment to be accorded "radioactive materials." The refusal of the Conference Committee to put an exception for certain "radioactive materials" into statutory language nullifies petitioners' reliance on this bit of legislative history. Furthermore, other portions of the legislative history indicate the intent of Congress to include all radioactive materials within the coverage of the FWPCA.[6] Without more, the House Report on the House version of the bill should not be the basis for an exemption for the entire nuclear industry from the FWPCA. *See Davidson v. Gardner*, 370 F.2d 803, 828 (6th Cir. 1966) and *United States v. Rohm and Haas Company*, 500 F.2d 167, 173 (5th Cir. 1974). As this court recently stated in *Train v. City of New York*, "legislative intention, without more is not legislation." 95 S.Ct. at 845.

[5] Continued
or natural gas, with appropriate precautions taken to assure that such injection or disposal does not lead to, or make substantially more likely, the degradation of usable water resources. For such exclusion to be effective, the State is required (1) to approve the well used either to facilitate production or for disposal purposes, and (2) to make a determination, based on sufficient investigation and evidence, that such degradation has not taken place and has not been or will not be made substantially more likely as a result of such injection or disposal."

[6] See 1 Leg. Hist. 161, 183, 198; 1 Leg. Hist. 745-746; 2 Leg. Hist. 1415, 1477. Senator Muskie, primary author and sponsor of the Act, continually reiterated his aversion to the AEC and his intent to rely on EPA in regulating all water pollution. See discussion, *supra* pp. 8-9.

The second bit of legislative history relied on by petitioners (Pet. 18), is particularly misleading. The cited floor debate merely reiterates that the FWPCA does not alter the licensing authority of the AEC. This debate did not consider any exclusions from the meaning of the term "radioactive materials" or exemptions from the comprehensive regulatory scheme of the FWPCA.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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May, 1975